(2006) 04 MAD CK 0160

Madras High Court

Case No: WA. No''s. 415 and 416 of 2006 and Writ Petition No. 1787 of 2006

Chairman and Managing Director, Metal Box India Ltd. and Metal Box Company Workers' Union		APPELLANT
	Vs	
Metal Box Company Workers Union and Others		RESPONDENT

Date of Decision: April 18, 2006

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 12(3), 18(1), 25O

Citation: (2007) 112 FLR 99 : (2006) 3 LLJ 255

Hon'ble Judges: A.P. Shah, C.J; Prabha Sridevan, J

Bench: Division Bench

Advocate: Jatinder Sethi W.A. No. 415/2006 for Niveditha, R. Thiagarajan W.A. No. 416/2006 for Niveditha, for the Appellant; N.G.R. Prasad, for Respondent-1 for K.M. Ramesh, V. Raghupathi, Govt. Pleader for Respondents-2 and 3, A.R.L. Sundaresan for Respondent-5 for V.C. Janardhanan and N.R. Chandran for Respondent-7 for Rita Chandrasekaran, for the Respondent

Judgement

Prabha Sridevan, J.
These writ appeals are filed against the orders of the learned single Judge granting interim stay of the impugned

settlement dated 1 8.1.2 006 entered into between the appellant and the fifth respondent on the prayer made by the first respondent herein. The

facts of the matter have been dealt with in detail by the learned single Judge and therefore, we will only refer to the important facts.

2. Mr. N.G.R. Prasad, learned Counsel appearing for the writ petitioner/first respondent submitted that in the event of this Court coming to the

conclusion that the stay deserves to be vacated, nothing would survive in the writ petition and therefore requested that the writ petition itself be

taken up for disposal.

3. The appellant-Company was declared as a sick company by order dated 27.5.1988 by the Board of Industrial Industrial and Financial

Reconstruction (BIFR) and the third respondent was appointed as the operating agency. Originally, there were three Unions - the first respondent-

Union, the fifth respondent-Union and another Union by name the Metal Box Company Staff Association. But now, the Metal Box Staff

Association has merged with the fifth respondent-Union. So, as far as we are concerned, there are only two Unions, the first respondentUnion

being the minority Union. The appellant-Company is a multi-Unit company and we are concerned with the Chennai unit. Though a rehabilitation

scheme was sanctioned by the BIFR on 10.6.1996, the matter went to the Supreme Court and finally, after hearing all parties concerned, the

BIFR sanctioned the updated rehabilitation scheme by order dated 18.8.2000 and directed the third respondent to prepare the scheme provisions.

4. The aforementioned scheme provided for sale of the appellant/ Unit as an on-going Unit with its liabilities. The members of the fifth respondent-

Union and the Metal Box Company Staff Association indicated that they would prefer to have a fair and reasonable settlement rather than re-

employment in the company. In July 2005, notices were issued by the Labour Department to the Unions to attend the conciliation proceedings. On

28.11.2005, a settlement u/s 18(1) of the Industrial Disputes Act was entered into between the appellant, the fifth respondent and the Metal Box

Company Staff Association. Thereafter, the conciliation proceedings continued, and after giving due opportunity to the first respondent-Union to

participate in the signing of the settlement u/s 12(3) of the Act, the fourth respondent, after having satisfied himself of the majority status of the

impugned settlement, finalized the impugned settlement u/s 12(3). Approximately, a sum of Rupees Five Crores was envisaged to be paid in

aggregate to the employees as per the terms of the settlement.

5. On behalf of the first respondent-Union, it was alleged that the fourth respondent had acted mala fide and had not actively engaged himself in

deciding whether the settlement was fair and reasonable and had instead, merely repeated verbatim, the terms of the 18(1) settlement entered into

between the fifth respondent-Union and the appellant-Company. It is next contended that the Chennai Unit of the Company having been closed,

the provisions of Section 25-O of the Industrial Disputes Act, which are mandatory, ought to have been complied with, but they had been violated.

It is also submitted that the first respondent-Union was not given an opportunity by the fourth respondent to express its objections. For the above

reasons, it was submitted that the first respondent-Union is justified in approaching this Court under Article 226 of the Constitution of India.

6. On behalf of the appellant-Company, it was submitted that if the first respondent-Union had any grievance, the proper recourse for them would

be to approach the forums constituted under the Industrial Disputes Act. The maintainability of the writ petition was stoutly challenged. It is

submitted that it is not correct to state that the fourth respondent denied the first respondent-Union a fair opportunity. According to them, several

crucial factors have been suppressed in the affidavit filed in support of the writ petition, and if the said facts had been considered by the learned

single Judge, the interim stay would not have been granted. Above all, it was submitted that the writ petition itself was not maintainable and the first

respondent ought to have sought for a reference and raised an industrial dispute.

7. On behalf of the fifth respondent-Union, it was submitted that the settlement arrived at was fair and reasonable. It is submitted that the

workmen, who had not received a pie for well over a decade, had accepted the settlement and by the order of stay, the workmen would be

denied the benefits of the settlement that had been entered into between the Management and the Union. According to them, the splinter Union had

no right to thwart the entire process.

8. Heard Mr. Jatinder Sethi, learned Senior Counsel appearing for the appellants, Mr. N.G.R. Prasad, learned Counsel for the first respondent-

Union, Mr. V. Raghupathi, learned Government Pleader for respondents 2 and 3, Mr. AR.L. Sundaresan, learned Senior Counsel for the fifth

respondent-Union and Mr. N.R. Chandran, learned Senior Counsel for the Bank.

9. The learned single Judge continued the stay on the ground that the writ petition having been admitted, stay should necessarily be granted;

otherwise, the writ petition would become infructuous and also because a prima facie case had been made out by the first respondent, who was

the writ petitioner, for the grant of stay.

10. We will now consider the main grounds raised by the first respondent/writ petitioner to support their case for stay.

11. According to the first respondent, the impugned settlement was not brought about with the assistance of the fourth respondent, since the fourth

respondent merely put his stamp on an agreement that was before him without independently considering whether the settlement was in the best

interest of the workmen. To support this ground, we were asked to compare the terms of the 12(3) settlement and the 18(1) settlement, which

would show that one was the verbatim reproduction of the other. The judgment in 1983 (I) L.L.J. 181 [Britannia Biscuit Co. Ltd. Employees''

Union v. Assistant Commissioner of Labour] was relied upon, which was confirmed by the Division Bench, wherein the learned single Judge had

held that if the Conciliation Officer had not assisted in the arrival of a settlement and had been guilty of colourable exercise of power, the writ

petition would be maintainable.

12. We have seen the impugned settlement u/s 18(1) and it is seen from paragraph (P) thereof that the first respondent-Union was given an

opportunity. Since they were not present before the BIFR and AAIFR, they were given time to produce their records and the matter was

adjourned to 26.12.2005 and on their request, the meeting was again postponed to 30.12.2005, on which date, their objections were received. It

is recorded that on 18.1.2006, at the meeting held before the fourth respondent, the differences and disputes had been resolved, and in view of the

fact that the fifth respondent-Union is a recognized Union, having majority of workers and considering ""the settlement as fair and reasonable"", the

settlement was signed u/s 12(3) of the Industrial Disputes Act. Therefore, from the records, it is not possible for us to arrive at a conclusion that the

fourth respondent did not independently apply his mind to the fairness and reasonableness of the settlement or that he denied opportunity to the

Unions, the interest of whose members had been taken into account.

13. The next ground raised on behalf of the first respondent-Union is that the provisions of Section 25-O of the Act were not complied with.

Reliance was placed on Oswal Agro Furane Ltd. and Another Vs. Oswal Agro Furane Workers Union and Others, . The Supreme Court, on the

facts of that case, held that since the appellant-Management had not applied for permission u/s 25-O of the Act, which was imperative in

character, the closure of the undertaking on the basis of the settlement arrived at with the workers was illegal. This objection also cannot be

sustained, since even the learned single Judge had found on facts that the appellant/Unit would be regarded as an ongoing Unit even during its sale

or disposal :

A bare reading of the said clause clearly establishes the fact that if the Unit is not possible to be reopened, then the disposal of plant, machinery,

equipments, other moveable and non-moveable assets is permissible subject to protection of legal dues of workmen of the Unit in case of disposal

or protection of the employment of the workmen in the event of sale to an acquiring party as an on-going Unit with its liabilities, under the

framework of the scheme. Therefore, even during sale or disposal of the Unit, it should be treated only as an on-going Unit by the AAIFR.

Mr. N.G.R. Prasad would, however, contend that in effect, there was a closure and it would be incorrect to hold that what was sold was a running

concern.

14. The third objection raised was that the first respondent-Union was not given an opportunity. It was urged on behalf of the first respondent-

Union that while it is true that the fourth respondent had called for their objections, thereafter, they were not informed that the conciliation

proceedings would be held on 18.1.2006. The first respondent-Union had, in fact, moved a writ petition on 18.1.2006, but the settlement was

signed with unseemly haste on the very same date. The fifth respondent-Union has produced the minutes of the joint general body meeting on

18.1.2006 and it is seen from the minutes recorded on that date as hereunder :

As per File No. E./9996/05, the Metal Box Workers'' Union has not given consent to the above agreement during the conciliation held on

30.12.2005.

It was submitted on behalf of the Management that when on 30.12.2005 the first respondent-Union had given its objections and indicated

categorically that it would not consent to sign the settlement, it cannot be aggrieved by the fact that it was not called for the conciliation proceedings

held on 18.1.2006, since it was a foregone conclusion that they would not sign the settlement. Mr. N.G.R. Prasad, however, disputes this factual

position and would submit that the first respondent-Union ought to have been called for the conciliation proceedings held on 18.1.2006. Therefore,

the third objection also deserves to be rejected.

15. The following decisions were cited by the learned Counsel in support of their respective contentions :

1989 (II) L.L.N. 693 [Pudukottai Textiles Ltd. v. Labour Court, Pudukottai] Provisional Liquidator, Ramakrishna Industries (Pvt.) Ltd. and

others Vs. Workers Jothi Mills and others, ; ANZ Grindlays Bank Ltd (now known as Standard Chartered Grindlays Bank Ltd.) Vs. Union of

India (UOI) and Others, ; [State of Uttaranchal v. Jagpal Singh Tyagi] I.T.C. Ltd. Workers Welfare Association and Another Vs. The

Management of I.T.C. Ltd. and Others, ; National Engineering Industries Ltd. Vs. State of Rajasthan and Others, ; Ram Pukar Singh and Others

Vs. Heavy Engineering Corporation and Others, ; Barauni Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Ltd., ; Jaihind

Roadways Vs. Maharashtra Rajya Mathadi Transport and General Kamgar Union and Others, ; (1997) 10 SCC 565; K. Venkadasan, Secretary,

NLC I.T.I. Apprentice Welfare Assn. Vs. The Chairman-cum-Director, Neyveli Lignite Corporation and Others, 2005 W.L.R. 310 [Tamil Nadu

State Transport Corporation (Coimbatore Division - I) Ltd. v. Rathinasamy] W.P. No. 44415 of 1999 dated 2.6.2000 Mysore Kirloskar

Mazdoor Sangh, Bangalore Vs. Management of Mysore Kirloskar Limited, Hubli Unit I, Hubli and Others, W.P. No. 3036 of 1998 dated

24.1.1991 Mumbai Shramik Sangh and Others Vs. N.D. Rathod, Conciliation Officer and Others,

16. On behalf of the first respondent-Union, reliance was placed on a latest judgment of the Supreme Court in L.K. Verma Vs. H.M.T. Ltd. and

Another, , where in paragraph 21, it was held as follows :

In any event, once a writ petition has been entertained and determined on merit of the matter, the appellate court, except in rare cases, would not

interfere therewith only on the ground of existence of alternative remedy. (See Smt. Kanak and Another Vs. U.P. Avas Evam Vikas Parishad and

Others, . We, therefore, do not see any justification to hold that the High Court wrongly entertained the writ petition filed by the respondent.

That was a case where a judgment was given on merits by finally disposing the writ petition. Here, we are still at the interlocutory stage. We have

already referred to the relevant materials available in this regard. It is not possible for us to come to the conclusion from these materials that there

was no fair opportunity to the first respondent-Union or that there was no independent application of mind by the fourth respondent on the

impugned settlement. Perhaps, the first respondent-Union may be able to establish the same before the Tribunal, where the factual controversies

can be laid to rest, but not here, where we are dealing with a writ petition under Article 226 of the Constitution.

17. It is not possible for us to accept the submissions made by the learned Counsel for the first respondent/Union that the mala fide nature of the

impugned settlement, and the questions whether there was a closure or not and whether the first respondent was given a reasonable opportunity

can be decided from the materials and therefore, it was not necessary for the workmen to be driven to the Tribunal for establishing these issues.

We have already seen that there are disputed questions of fact and therefore, we are inclined to accept the objection raised on behalf of the

appellant that the writ petition itself is not maintainable and therefore, no interim order should have been granted.

18. Learned senior counsel for the appellant requested that a direction may be issued to the Government to refer the industrial dispute to the

Industrial Tribunal and a time frame fixed for disposal of the same by the Tribunal. In view of the fact that the workmen have been fighting for their

rights for over a decade, we think, in the interest of justice, it is appropriate to issue a direction to the Government to refer the dispute to the

Industrial Tribunal.

19. For all these reasons, the interim stay granted by the learned single Judge is vacated; the writ appeals are allowed and the writ petition is

disposed of with a direction to the second respondentState Government to refer the dispute to the Industrial Tribunal within a period of six weeks

from this date and the Tribunal to dispose of the industrial dispute within a period of four months thereafter. However, there will be no order as to

costs. Consequently, W.A.M.P. No. 885 and 886 of 2006 are closed.